
By: **Delegates Dembrow and Montague**
Introduced and read first time: January 12, 2001
Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Crimes - Death Penalty - Abolition**

3 FOR the purpose of repealing the death penalty; repealing procedures and
4 requirements related to the death penalty; providing that certain inmates who
5 have been sentenced to death may not be executed and shall be considered as
6 having received a sentence of life imprisonment without the possibility of parole
7 under certain circumstances; providing that in certain cases in which the State
8 has filed a notice to seek a sentence of death the notice shall be considered
9 withdrawn and it shall be considered a notice to seek a sentence of life
10 imprisonment without the possibility of parole under certain circumstances;
11 providing that certain persons serving certain life sentences are not eligible
12 persons for Patuxent Institution under certain circumstances; altering the
13 circumstances concerning parole for persons serving life sentences when the
14 State sought a certain penalty; making conforming and clarifying changes; and
15 generally relating to the abolition of the death penalty.

16 BY repealing and reenacting, with amendments,
17 Article 27 - Crimes and Punishments
18 Section 412, 635, 645A, 645JA, and 645JC(e), (f), and (g)
19 Annotated Code of Maryland
20 (1996 Replacement Volume and 2000 Supplement)

21 BY repealing
22 Article 27 - Crimes and Punishments
23 Section 413, 413A, 414, 627, 643B(g), 645JC(d), and 780A
24 Annotated Code of Maryland
25 (1996 Replacement Volume and 2000 Supplement)

26 BY repealing
27 Article - Courts and Judicial Proceedings
28 Section 8-210(c)
29 Annotated Code of Maryland
30 (1998 Replacement Volume and 2000 Supplement)

1 BY repealing and reenacting, with amendments,
2 Article - Courts and Judicial Proceedings
3 Section 8-210(d), (e), and (f), 8-301, 9-204, and 12-307
4 Annotated Code of Maryland
5 (1998 Replacement Volume and 2000 Supplement)

6 BY repealing
7 Article - Correctional Services
8 Section 3-901 through 3-909, inclusive, and the subtitle "Subtitle 9. Death
9 Penalty Procedures"
10 Annotated Code of Maryland
11 (1999 Volume and 2000 Supplement)

12 BY repealing and reenacting, with amendments,
13 Article - Correctional Services
14 Section 4-101(e)(2), 4-305(b), 6-112(c), 7-301(d), and 7-601(a)
15 Annotated Code of Maryland
16 (1999 Volume and 2000 Supplement)

17 BY repealing and reenacting, with amendments,
18 Article - Health - General
19 Section 8-505(b), 12-104(b), 12-105(a), and 12-106(a)
20 Annotated Code of Maryland
21 (2000 Replacement Volume)

22 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
23 MARYLAND, That the Laws of Maryland read as follows:

24 **Article 27 - Crimes and Punishments**

25 412.

26 (a) If a person is found guilty of murder, the court or jury that determined the
27 person's guilt shall state in the verdict whether the person is guilty of murder in the
28 first degree or murder in the second degree.

29 (b) [Except as provided under subsection (g) of this section, a] A person found
30 guilty of murder in the first degree shall be sentenced to [death,] imprisonment for
31 [life,] LIFE or imprisonment for life without the possibility of parole. The sentence
32 shall be imprisonment for life unless: (1)(i) the State notified the person in writing at
33 least 30 days prior to trial that it intended to seek a sentence of death, and advised
34 the person of each aggravating circumstance upon which it intended to rely, and (ii) a
35 sentence of death is imposed in accordance with § 413; or (2)] the State notified the
36 person in writing at least 30 days prior to trial that it intended to seek a sentence of
37 imprisonment for life without the possibility of parole under [§ 412 or § 413 of this
38 article] THIS SECTION.

1 [(c) (1) If a State's Attorney files or withdraws a notice of intent to seek a
2 sentence of death, the State's Attorney shall file a copy of the notice or withdrawal
3 with the clerk of the Court of Appeals.

4 (2) The validity of a notice of intent to seek a sentence of death that is
5 served on a defendant in a timely manner shall in no way be affected by the State's
6 Attorney's failure to file a copy of the death notice in a timely manner with the clerk
7 of the Court of Appeals.]

8 [(d)] (C) A person found guilty of murder in the second degree shall be
9 sentenced to imprisonment for not more than 30 years.

10 [(e)] (D) [Except as provided by § 413 of this article, the] THE court shall
11 decide whether to impose a sentence of life imprisonment or life imprisonment
12 without the possibility of parole.

13 [(f) (1) In this section, the following terms have the meanings indicated.

14 (2) "Imprisonment for life without the possibility of parole" means
15 imprisonment for the natural life of an inmate under the custody of a correctional
16 institution, including the Patuxent Institution.

17 (3) "Mentally retarded" means the individual has significantly
18 subaverage intellectual functioning as evidenced by an intelligence quotient of 70 or
19 below on an individually administered intelligence quotient test and impairment in
20 adaptive behavior, and the mental retardation is manifested before the individual
21 attains the age of 22.

22 (g) (1) If a person found guilty of murder in the first degree was, at the time
23 the murder was committed, less than 18 years old or if the person establishes by a
24 preponderance of the evidence that the person was, at the time the murder was
25 committed, mentally retarded, the person shall be sentenced to imprisonment for life
26 or imprisonment for life without the possibility of parole and may not be sentenced to
27 death.

28 (2) The sentence shall be imprisonment for life unless the State notified
29 the person in writing at least 30 days prior to trial that the State intended to seek a
30 sentence of imprisonment for life without the possibility of parole under this section
31 or § 413 of this article.]

32 [413.

33 (a) If a person is found guilty of murder in the first degree, and if the State
34 had given the notice required under § 412(b), a separate sentencing proceeding shall
35 be conducted as soon as practicable after the trial has been completed to determine
36 whether he shall be sentenced to death.

37 (b) This proceeding shall be conducted:

38 (1) Before the jury that determined the defendant's guilt; or

- 1 (2) Before a jury impaneled for the purpose of the proceeding if:
- 2 (i) The defendant was convicted upon a plea of guilty;
- 3 (ii) The defendant was convicted after a trial before the court
4 sitting without a jury;
- 5 (iii) The jury that determined the defendant's guilt has been
6 discharged by the court for good cause; or
- 7 (iv) Review of the original sentence of death by a court of competent
8 jurisdiction has resulted in a remand for resentencing; or
- 9 (3) Before the court alone, if a jury sentencing proceeding is waived by
10 the defendant.
- 11 (c) (1) The following type of evidence is admissible in this proceeding:
- 12 (i) Evidence relating to any mitigating circumstance listed in
13 subsection (g) of this section;
- 14 (ii) Evidence relating to any aggravating circumstance listed in
15 subsection (d) of this section of which the State had notified the defendant pursuant
16 to § 412(b) of this article;
- 17 (iii) Evidence of any prior criminal convictions, pleas of guilty or
18 nolo contendere, or the absence of such prior convictions or pleas, to the same extent
19 admissible in other sentencing procedures;
- 20 (iv) Any presentence investigation report. However, any
21 recommendation as to sentence contained in the report is not admissible; and
- 22 (v) Any other evidence that the court deems of probative value and
23 relevant to sentence, provided the defendant is accorded a fair opportunity to rebut
24 any statements.
- 25 (2) The State and the defendant or his counsel may present argument for
26 or against the sentence of death.
- 27 (3) After presentation of the evidence in a proceeding before a jury, in
28 addition to any other appropriate instructions permitted by law, the court shall
29 instruct the jury as to the findings it must make in order to determine whether the
30 sentence shall be death, imprisonment for life without the possibility of parole, or
31 imprisonment for life, and the burden of proof applicable to these findings in
32 accordance with subsection (f) or subsection (h) of this section.
- 33 (d) In determining the sentence, the court or jury, as the case may be, shall
34 first consider whether, beyond a reasonable doubt, any of the following aggravating
35 circumstances exist:

1 (1) One or more persons committed the murder of a law enforcement
2 officer while in the performance of his duties;

3 (2) The defendant committed the murder at a time when he was confined
4 in any correctional institution;

5 (3) The defendant committed the murder in furtherance of an escape or
6 an attempt to escape from or evade the lawful custody, arrest, or detention of or by an
7 officer or guard of a correctional institution or by a law enforcement officer;

8 (4) The victim was taken or attempted to be taken in the course of a
9 kidnapping or abduction or an attempt to kidnap or abduct;

10 (5) The victim was a child abducted in violation of § 2 of this article;

11 (6) The defendant committed the murder pursuant to an agreement or
12 contract for remuneration or the promise of remuneration to commit the murder;

13 (7) The defendant engaged or employed another person to commit the
14 murder and the murder was committed pursuant to an agreement or contract for
15 remuneration or the promise of remuneration;

16 (8) At the time of the murder, the defendant was under sentence of death
17 or imprisonment for life;

18 (9) The defendant committed more than one offense of murder in the
19 first degree arising out of the same incident; or

20 (10) The defendant committed the murder while committing or
21 attempting to commit a carjacking, armed carjacking, robbery under § 486 or § 487 of
22 this article, arson in the first degree, rape or sexual offense in the first degree.

23 (e) As used in this section, the following terms have the meanings indicated
24 unless a contrary meaning is clearly intended from the context in which the term
25 appears:

26 (1) (i) The terms "defendant" and "person", except as those terms
27 appear in subsection (d)(1) and (7) of this section, include only a principal in the first
28 degree.

29 (ii) In subsection (d)(1) of this section, the term "person" means:

30 1. A principal in the first degree; or

31 2. A principal in the second degree who:

32 A. Willfully, deliberately, and with premeditation intended
33 the death of the law enforcement officer;

34 B. Was a major participant in the murder; and

1 C. Was actually present at the time and place of the murder.

2 (2) The term "correctional institution" includes any institution for the
3 detention or confinement of persons charged with or convicted of a crime, including
4 Patuxent Institution, any institution for the detention or confinement of juveniles
5 charged with or adjudicated as being delinquent, and any hospital in which the
6 person was confined pursuant to an order of a court exercising criminal jurisdiction.

7 (3) (i) The term "law enforcement officer" has the meaning given in §
8 727 of this article.

9 (ii) The term "law enforcement officer", as used in subsection (d) of
10 this section, includes:

11 1. An officer serving in a probationary status;

12 2. A parole and probation officer;

13 3. A law enforcement officer of a jurisdiction outside of
14 Maryland; and

15 4. If the law enforcement officer is wearing the uniform worn
16 by the law enforcement officer while acting in an official capacity or is prominently
17 displaying his official badge or other insignia of office, a law enforcement officer
18 privately employed as a security officer or special policeman under the provisions of
19 Article 41, §§ 4-901 through 4-913 of the Code.

20 (4) "Imprisonment for life without the possibility of parole" means
21 imprisonment for the natural life of an inmate under the custody of a correctional
22 institution, including the Patuxent Institution.

23 (f) If the court or jury does not find, beyond a reasonable doubt, that one or
24 more of these aggravating circumstances exist, it shall state that conclusion in
25 writing, and a sentence of death may not be imposed.

26 (g) If the court or jury finds, beyond a reasonable doubt, that one or more of
27 these aggravating circumstances exist, it shall then consider whether, based upon a
28 preponderance of the evidence, any of the following mitigating circumstances exist:

29 (1) The defendant has not previously (i) been found guilty of a crime of
30 violence; (ii) entered a plea of guilty or nolo contendere to a charge of a crime of
31 violence; or (iii) had a judgment of probation on stay of entry of judgment entered on
32 a charge of a crime of violence. As used in this paragraph, "crime of violence" means
33 abduction, arson in the first degree, escape in the first degree, kidnapping,
34 manslaughter, except involuntary manslaughter, mayhem, murder, robbery under §
35 486 or § 487 of this article, carjacking or armed carjacking, or rape or sexual offense
36 in the first or second degree, or an attempt to commit any of these offenses, or the use
37 of a handgun in the commission of a felony or another crime of violence.

- 1 (2) The victim was a participant in the defendant's conduct or consented
2 to the act which caused the victim's death.
- 3 (3) The defendant acted under substantial duress, domination or
4 provocation of another person, but not so substantial as to constitute a complete
5 defense to the prosecution.
- 6 (4) The murder was committed while the capacity of the defendant to
7 appreciate the criminality of his conduct or to conform his conduct to the
8 requirements of law was substantially impaired as a result of mental incapacity,
9 mental disorder or emotional disturbance.
- 10 (5) The youthful age of the defendant at the time of the crime.
- 11 (6) The act of the defendant was not the sole proximate cause of the
12 victim's death.
- 13 (7) It is unlikely that the defendant will engage in further criminal
14 activity that would constitute a continuing threat to society.
- 15 (8) Any other facts which the jury or the court specifically sets forth in
16 writing that it finds as mitigating circumstances in the case.
- 17 (h) (1) If the court or jury finds that one or more of these mitigating
18 circumstances exist, it shall determine whether, by a preponderance of the evidence,
19 the aggravating circumstances outweigh the mitigating circumstances.
- 20 (2) If it finds that the aggravating circumstances outweigh the
21 mitigating circumstances, the sentence shall be death.
- 22 (3) If it finds that the aggravating circumstances do not outweigh the
23 mitigating circumstances, a sentence of death may not be imposed.
- 24 (i) The determination of the court or jury shall be in writing, and, if a jury,
25 shall be unanimous and shall be signed by the foreman.
- 26 (j) The determination of the court or jury shall state, specifically:
- 27 (1) Which, if any, aggravating circumstances it finds to exist;
- 28 (2) Which, if any, mitigating circumstances it finds to exist;
- 29 (3) Whether any aggravating circumstances found under subsection (d)
30 of this section outweigh the mitigating circumstances found under subsection (g) of
31 this section;
- 32 (4) Whether the aggravating circumstances found under subsection (d)
33 do not outweigh mitigating circumstances under subsection (g); and
- 34 (5) The sentence, determined in accordance with subsection (f) or (h).

1 (k) (1) If the jury determines that a sentence of death shall be imposed
2 under the provisions of this section, then the court shall impose a sentence of death.

3 (2) If the jury, within a reasonable time, is not able to agree as to
4 whether a sentence of death shall be imposed, the court may not impose a sentence of
5 death.

6 (3) If the sentencing proceeding is conducted before a court without a
7 jury, the court shall determine whether a sentence of death shall be imposed under
8 the provisions of this section.

9 (4) If the court or jury determines that a sentence of death may not be
10 imposed, and the State did not give the notice required under § 412(b) of this article
11 of intention to seek a sentence of life imprisonment without the possibility of parole,
12 the court shall impose a sentence of life imprisonment.

13 (5) If the State gives the notice required under § 412(b) of this article of
14 intention to seek a sentence of imprisonment for life without the possibility of parole
15 but does not give notice of intention to seek the death penalty, the court shall conduct
16 a separate sentencing proceeding as soon as practicable after the trial has been
17 completed to determine whether to impose a sentence of imprisonment for life or
18 imprisonment for life without the possibility of parole.

19 (6) If the State gives the notice required under § 412(b) of this article of
20 intention to seek the death penalty in addition to the notice of intention to seek a
21 sentence of imprisonment for life without the possibility of parole, and the court or
22 jury determines that a sentence of death may not be imposed under the provisions of
23 this section, that court or jury shall determine whether to impose a sentence of
24 imprisonment for life or imprisonment for life without the possibility of parole.

25 (7) (i) In determining whether to impose a sentence of imprisonment
26 for life without the possibility of parole, a jury shall agree unanimously on the
27 imposition of a sentence of imprisonment for life without the possibility of parole.

28 (ii) If the jury agrees unanimously to impose a sentence of
29 imprisonment for life without the possibility of parole, the court shall impose a
30 sentence of imprisonment for life without the possibility of parole.

31 (iii) If the jury, within a reasonable time, is not able to agree
32 unanimously on the imposition of a sentence of imprisonment for life without the
33 possibility of parole, the court shall dismiss the jury and impose a sentence of
34 imprisonment for life.

35 (8) If the State gives the notice required under § 412 of this article of the
36 State's intention to seek a sentence of imprisonment for life without the possibility of
37 parole, the court shall conduct a separate sentencing proceeding as soon as
38 practicable after the trial has been completed to determine whether to impose a
39 sentence of imprisonment for life or imprisonment for life without the possibility of
40 parole.

1 (l) The Court of Appeals may adopt rules of procedure to govern the conduct of
2 a sentencing proceeding conducted pursuant to this section, including any forms to be
3 used by the court or jury in making its written findings and determinations of
4 sentence.

5 (m) (1) A judge shall appoint at least 2 alternate jurors when impaneling a
6 jury for any proceeding:

7 (i) In which the defendant is being tried for a crime for which the
8 death penalty may be imposed; or

9 (ii) Which is held under the provisions of this section.

10 (2) The alternate jurors shall be retained during the length of the
11 proceedings under such restrictions and regulations as the judge may impose.

12 (3) (i) If any juror dies, becomes incapacitated, or disqualified, or is
13 discharged for any other reason before the jury begins its deliberations on sentencing,
14 an alternate juror becomes a juror in the order in which selected, and serves in all
15 respects as those selected on the regular trial panel.

16 (ii) An alternate juror may not replace a juror who is discharged
17 during the actual deliberations of the jury on the guilt or innocence of the defendant,
18 or on the issue of sentencing.]

19 [413A.

20 A judge may not instruct the jury that the jury must assume that a sentence for
21 life imprisonment is for the natural life of the defendant.]

22 [414.

23 (a) Whenever the death penalty is imposed, and the judgment becomes final,
24 the Court of Appeals shall review the sentence on the record.

25 (b) The clerk of the trial court shall transmit to the Clerk of the Court of
26 Appeals the entire record and transcript of the sentencing proceeding within ten days
27 after receipt of the transcript by the trial court. The clerk also shall transmit the
28 written findings and determination of the court or jury and a report prepared by the
29 trial court. The report shall be in the form of a standard questionnaire prepared and
30 supplied by the Court of Appeals of Maryland and shall include a recommendation by
31 the trial court as to whether or not imposition of the sentence of death is justified in
32 the case.

33 (c) Both the State and the defendant may submit briefs and present oral
34 argument within the time provided by the Court.

35 (d) Any appeal from the verdict shall be consolidated in the Court of Appeals
36 with the review of sentence.

1 (e) In addition to the consideration of any errors properly before the Court on
2 appeal, the Court of Appeals shall consider the imposition of the death sentence. With
3 regard to the sentence, the Court shall determine:

4 (1) Whether the sentence of death was imposed under the influence of
5 passion, prejudice, or any other arbitrary factor;

6 (2) Whether the evidence supports the jury's or court's finding of a
7 statutory aggravating circumstance under § 413(d); and

8 (3) Whether the evidence supports the jury's or court's finding that the
9 aggravating circumstances outweigh the mitigating circumstances.

10 (f) In addition to its review pursuant to any direct appeal, with regard to the
11 death sentence, the Court shall:

12 (1) Affirm the sentence;

13 (2) Set aside the sentence and remand the case for the conduct of a new
14 sentencing proceeding under § 413; or

15 (3) Set aside the sentence and remand for modification of the sentence to
16 imprisonment for life.

17 (g) The Court may adopt rules of procedure to provide for the expedited review
18 of all death sentences pursuant to this section.]

19 [627.

20 If any offender, on conviction, may be sentenced to suffer death, the court before
21 whom such offender shall be tried and convicted shall sentence him to suffer death by
22 the intravenous administration of a lethal quantity of an ultrashort-acting
23 barbiturate or other similar drug in combination with a chemical paralytic agent.]

24 635.

25 No conviction or attainder shall work corruption of blood or forfeiture of estate;
26 the estate of such persons as shall destroy their own lives shall descend or vest as in
27 case of natural death; if any person be killed by casualty there shall be no forfeiture in
28 consequence thereof; and approver shall never be admitted in any case whatsoever[,
29 and a sentence of death shall not be executed in less than twenty days after
30 judgment].

31 643B.

32 [(g) If a person is sentenced to death, the provisions of this section do not
33 apply.]

1 645A.

2 (a) (1) Subject to the provisions of [paragraphs (2) and (3)] PARAGRAPH (2)
3 of this subsection, any person convicted of a crime and either incarcerated under
4 sentence of [death or] imprisonment or on parole or probation, including any person
5 confined or on parole or probation as a result of a proceeding before the District Court
6 who claims that the sentence or judgment was imposed in violation of the
7 Constitution of the United States or the Constitution or laws of this State, or that the
8 court was without jurisdiction to impose the sentence, or that the sentence exceeds
9 the maximum authorized by law, or that the sentence is otherwise subject to collateral
10 attack upon any ground of alleged error which would otherwise be available under a
11 writ of habeas corpus, writ of coram nobis, or other common-law or statutory remedy,
12 may institute a proceeding under this subtitle in the circuit court for the county to set
13 aside or correct the sentence, provided the alleged error has not been previously and
14 finally litigated or waived in the proceedings resulting in the conviction, or in any
15 other proceeding that the petitioner has taken to secure relief from his conviction.

16 (2) (i) A person may file only one petition, arising out of each trial, for
17 relief under this subtitle.

18 (ii) Unless extraordinary cause is shown, [in a case in which a
19 sentence of death has not been imposed,] a petition under this subtitle may not be
20 filed later than 10 years from the imposition of sentence.

21 (iii) The court may in its discretion reopen a postconviction
22 proceeding that was previously concluded if the court determines that such action is
23 in the interests of justice.

24 [(3) (i) Subject to the provisions of subparagraph (ii) of this paragraph,
25 in a case in which a sentence of death has been imposed, the circuit court may not
26 exercise jurisdiction over a proceeding under this subheading unless the petition is
27 filed within 210 days after the date of:

28 1. An order denying a petition for a writ of certiorari by the
29 Supreme Court of the United States;

30 2. A decision affirming the death sentence by the Supreme
31 Court of the United States; or

32 3. The expiration of the time for seeking review by the
33 Supreme Court of the United States if no review is sought.

34 (ii) The circuit court may extend the period within which the
35 petition shall be filed if good cause for the extension is shown.

36 (4) Notwithstanding any other provision of law and subject to paragraph
37 (5) of this subsection, a warrant of execution shall be stayed for 210 days after the
38 date of:

1 (i) An order denying any petition for a writ of certiorari by the
2 Supreme Court of the United States;

3 (ii) A decision affirming the death sentence by the Supreme Court
4 of the United States; or

5 (iii) The expiration of the time for seeking review by the Supreme
6 Court of the United States if no review is sought.

7 (5) (i) A defendant in a case in which a sentence of death has been
8 imposed may waive the right to file a petition under this subheading prior to the
9 expiration of the 210-day period established in paragraph (3) of this subsection
10 provided that the waiver is:

11 1. Knowing, voluntary, and intelligent; and

12 2. In writing.

13 (ii) A waiver under subparagraph (i) of this paragraph may be
14 revoked no later than 15 days before the scheduled date of execution by:

15 1. Filing a petition for postconviction relief under this
16 subheading; or

17 2. Withdrawing the waiver in writing.

18 (iii) A waiver of the right to file a petition under this subheading
19 prior to the expiration of the 210-day period established in paragraph (3) of this
20 subsection shall conclude the State postconviction review process for the purposes of
21 § 75 of this article.

22 (iv) The revocation of a waiver under subparagraph (ii)1 of this
23 paragraph shall continue the State postconviction review process for the purposes of
24 § 75 of this article.

25 (v) The revocation of a waiver under subparagraph (ii)2 of this
26 paragraph shall continue the State postconviction review process for the purposes of
27 § 75 of this article until the filing of a petition for postconviction relief or the
28 expiration of the 210-day period established in paragraph (3) of this subsection,
29 whichever occurs first.]

30 (b) For the purposes of this subtitle, an allegation of error shall be deemed to
31 be finally litigated when an appellate court of the State has rendered a decision on
32 the merits thereof, either upon direct appeal or upon any consideration of an
33 application for leave to appeal filed pursuant to § 645-I of this subtitle; or when a
34 court of original jurisdiction, after a full and fair hearing, has rendered a decision on
35 the merits thereof upon a petition for a writ of habeas corpus or a writ of error coram
36 nobis, unless said decision upon the merits of such petition is clearly erroneous.

1 (c) (1) For the purposes of this subtitle, an allegation of error shall be
2 deemed to be waived when a petitioner could have made, but intelligently and
3 knowingly failed to make, such allegation before trial, at trial, on direct appeal
4 (whether or not the petitioner actually took such an appeal), in an application for
5 leave to appeal a conviction based on a guilty plea, in any habeas corpus or coram
6 nobis proceeding actually instituted by said petitioner, in a prior petition under this
7 subtitle, or in any other proceeding actually instituted by said petitioner, unless the
8 failure to make such allegation shall be excused because of special circumstances. The
9 burden of proving the existence of such special circumstances shall be upon the
10 petitioner.

11 (2) When an allegation of error could have been made by a petitioner
12 before trial, at trial, on direct appeal (whether or not said petitioner actually took
13 such an appeal), in an application for leave to appeal a conviction based on a guilty
14 plea, in any habeas corpus or coram nobis proceeding actually instituted by said
15 petitioner, in a prior petition under this subtitle, or in any other proceeding actually
16 instituted by said petitioner, but was not in fact so made, there shall be a rebuttable
17 presumption that said petitioner intelligently and knowingly failed to make such
18 allegation.

19 (d) For the purposes of this subtitle and notwithstanding any other provision
20 hereof, no allegation of error shall be deemed to have been finally litigated or waived
21 where, subsequent to any decision upon the merits thereof or subsequent to any
22 proceeding in which said allegation otherwise may have been waived, any court
23 whose decisions are binding upon the lower courts of this State holds that the
24 Constitution of the United States or of Maryland imposes upon State criminal
25 proceedings a procedural or substantive standard not theretofore recognized, which
26 such standard is intended to be applied retrospectively and would thereby affect the
27 validity of the petitioner's conviction or sentence.

28 (e) The remedy herein provided is not a substitute for, nor does it affect any
29 remedies which are incident to the proceedings in the trial court or any remedy of
30 direct review of the sentence or conviction. [Except as provided in subsection (a)(3) of
31 this section, a] A petition for relief under this subtitle may be filed at any time, except
32 that where an appeal has been taken from the judgment of conviction to the Court of
33 Special Appeals, it shall not be necessary to appoint counsel or conduct a hearing or
34 take any action whatsoever on the petition, until the judgment of conviction becomes
35 final in the Court of Special Appeals. No appeals to the Court of Appeals or the Court
36 of Special Appeals in habeas corpus or coram nobis cases, or from other common-law
37 or statutory remedies which have heretofore been available for challenging the
38 validity of incarceration under sentence of [death or] imprisonment shall be
39 permitted or entertained, except appeals in such cases pending in the Court of
40 Appeals on June 1, 1958, shall be processed in due course. Provided, however, that
41 nothing in this subtitle shall operate to bar an appeal to the Court of Special Appeals
42 (1) in a habeas corpus proceeding instituted under Article 41, § 2-210 of the Code or
43 (2) in any other proceeding in which a writ of habeas corpus is sought for any purpose
44 other than to challenge the legality of a conviction of a crime or sentence of [death or]
45 imprisonment therefor, including confinement as a result of a proceeding under Title
46 4 of the Correctional Services Article.

1 (f) (1) Subject to paragraph (2) of this subsection, a petitioner is entitled to
2 the assistance of counsel and a hearing on a petition filed under this section.

3 (2) If a defendant seeks to reopen a postconviction proceeding under
4 subsection (a)(2)(iii) of this section, the court shall determine whether assistance of
5 counsel or a hearing should be granted.

6 [(g) (1) The date for a hearing on a petition filed in a case in which a sentence
7 of death has been imposed shall:

8 (i) Be set within 30 days after the day on which the petition is
9 filed; and

10 (ii) Be no later than 90 days after the day on which the petition is
11 filed.

12 (2) After the hearing date is set under paragraph (1) of this subsection,
13 the court may not change the date unless:

14 (i) A party files a motion requesting the change; and

15 (ii) Good cause for the change is shown.

16 (3) The court shall issue a decision on a petition filed in a case in which
17 a sentence of death has been imposed within 90 days after the hearing on the petition.

18 (4) This subsection may be enforced by either party through the filing of
19 a petition for writ of mandamus in the Court of Appeals.]

20 [(h) (G) (1) Before a hearing on a petition filed under this subtitle, the
21 victim or victim's representative shall be notified of the proceeding as provided under
22 § 770 or § 784 of this article.

23 (2) A victim or victim's representative shall have the right to attend any
24 hearing under this subtitle as provided under § 857 of this article.

25 645JA.

26 [(a) Unless the sentence was imposed by more than one trial judge, every
27 person convicted of a crime by any trial court of this State and sentenced to serve,
28 with or without suspension, a total of more than two years imprisonment in any penal
29 or correctional institution in this State shall be entitled to have the sentence reviewed
30 by a panel of three or more trial judges of the judicial circuit in which the sentencing
31 court is located. However, a person has no right to have any sentence reviewed more
32 than once pursuant to this section. Notwithstanding any rule of the Court of Appeals
33 to the contrary, the judge who sentenced the convicted person shall not be one of the
34 members of the panel, but if he so desires he may sit with the panel in an advisory
35 capacity only.

1 [(b) The review of a sentence of death is governed by the provisions of § 414 of
2 this article.]

3 645JC.

4 [(d) The panel may not increase a sentence for imprisonment for life,
5 imprisonment for life without the possibility of parole, or a term of years to the
6 sentence of death.]

7 [(e) (D) The decision of the panel in each review shall be rendered by a
8 majority of the members of the panel and shall be rendered within thirty days from
9 the filing date of the application for review.

10 [(f) (E) If the panel orders any different sentence, the panel shall resentence
11 and notify the convicted person in accordance with the order of the panel.

12 [(g) (F) Time served on any sentence under review shall be deemed to have
13 been served on the sentence substituted.

14 [780A.

15 (a) In this section, "victim's representative" has the meaning stated in § 780 of
16 this subheading.

17 (b) Except as provided in subsection (c) of this section, a victim's
18 representative has the same right to address the jury in a death penalty sentencing as
19 a victim's representative has to address a judge under § 780 of this subheading.

20 (c) (1) On motion of a defendant or the State or on its own request, the court
21 in a death penalty sentencing may hold a hearing outside of the presence of the jury
22 to determine whether a victim's representative may present an oral address to the
23 jury.

24 (2) If the court determines that part of a victim's representative's oral
25 address will be so unduly prejudicial that it renders the jury sentencing proceeding
26 fundamentally unfair, the court may limit the prejudicial portion of the oral address.]

27 **Article - Courts and Judicial Proceedings**

28 8-210.

29 [(c) A person may not be disqualified, excused, or excluded from service in a
30 particular case as a juror of the State by reason of his beliefs against capital
31 punishment unless such belief would prevent his returning an impartial verdict
32 according to law.]

33 [(d) (C) No person or class of person may be disqualified, excused, or
34 exempted from service as a juror except under this section or § 8-209 of this title.

1 [(e)] (D) Any person excused from jury service or from a particular jury under
2 [subsection (a), (b), or (c)] SUBSECTION (A) OR SUBSECTION (B) of this section is
3 eligible to sit on another jury if the basis for his excuse is not relevant to his ability to
4 serve on the other jury.

5 [(f)] (E) When a person is disqualified or excused from jury service, the jury
6 commissioner or clerk shall note the specific reason in the space provided on his juror
7 qualification form or on the juror's card drawn from the qualified jury wheel.

8 8-301.

9 [(a)] (A) In a trial in which the defendant is subject, on any single count, to a
10 sentence of death because notice of intention to seek a sentence of death has been
11 given under Article 27, § 412 of the Code, each defendant is permitted 20 peremptory
12 challenges and the State is permitted 10 peremptory challenges for each defendant.]

13 [(b)] (A) In a criminal trial in which the defendant is subject, on any single
14 count, to a sentence of life imprisonment, [including a case in which notice of
15 intention to seek a sentence of death has not been given under Article 27, § 412 of the
16 Code.] except for common law offenses for which no specific penalty is provided by
17 statute, each defendant is permitted 20 peremptory challenges and the State is
18 permitted 10 peremptory challenges for each defendant.

19 [(c)] (B) Except as provided in [subsections (a) and (b)] SUBSECTION (A) of
20 this section, in a criminal trial in which the defendant is subject, on any single count,
21 to a sentence of 20 years or more, except for common law offenses for which no specific
22 penalty is provided by statute, each defendant is permitted 10 peremptory challenges
23 and the State is permitted 5 peremptory challenges for each defendant.

24 [(d)] (C) In all other criminal cases, each party is permitted 4 peremptory
25 challenges.

26 [(e)] (D) The clerk of the court shall provide a sufficient number of prospective
27 jurors to allow the parties to exercise the peremptory challenges permitted by this
28 section or the Maryland Rules.

29 9-204.

30 [(a)] (A) The court which issued an execution on a forfeited recognizance for a
31 witness who failed to appear may discharge the witness from execution upon motion
32 showing good and sufficient cause for the failure.

33 [(b)] (B) This section does not apply in a case if capital punishment may be
34 involved.]

1 12-307.

2 The Court of Appeals has:

3 (1) Jurisdiction to review a case or proceeding pending in or decided by
4 the Court of Special Appeals in accordance with Subtitle 2 of this title;

5 (2) Jurisdiction to review a case or proceeding decided by a circuit court,
6 in accordance with § 12-305 of this subtitle; AND

7 (3) Exclusive appellate jurisdiction with respect to a question of law
8 certified to it under the Uniform Certification of Questions of Law Act[; and

9 (4) Exclusive appellate jurisdiction over a criminal case in which the
10 death penalty is imposed and any appellate proceeding under § 3-904 of the
11 Correctional Services Article].

12 **Article - Correctional Services**

13 [Subtitle 9. Death Penalty Procedures.]

14 [3-901.

15 (a) Whenever an individual is sentenced to death, the judge of the court where
16 the conviction takes place shall cause the individual to be taken into custody by the
17 sheriff of the county in which the individual was indicted.

18 (b) (1) While the inmate is in the custody of the sheriff, the sheriff shall:

19 (i) hold the inmate under guard as the sheriff determines to be
20 necessary; and

21 (ii) keep the inmate in solitary confinement in the same manner as
22 is required when the inmate is in the custody of the Division.

23 (2) As soon as possible, the sheriff shall deliver the inmate to the
24 Division to await the execution of the inmate's sentence.

25 (c) The expenses of the Division relating to the detention of an inmate under
26 sentence of death, including the expenses of guarding, lodging, feeding, clothing, and
27 caring for the inmate, may not be assessed against, billed to, or paid by the county in
28 which the inmate was indicted.]

29 [3-902.

30 (a) (1) In this section the following words have the meanings indicated.

31 (2) (i) "State postconviction review process" means the initial
32 adjudication of a postconviction petition filed under Article 27, § 645A(a)(2)(i) of the
33 Code, including any appellate review of the postconviction proceeding.

- 1 (ii) "State postconviction review process" does not include:
- 2 1. a postconviction proceeding that has been reopened under
3 Article 27, § 645A(a)(2)(iii) of the Code or any appellate review of the proceeding; or
- 4 2. a postconviction proceeding on a second petition filed
5 before October 1, 1995, or any appellate review of the proceeding.
- 6 (3) "Warrant of execution" means a warrant for the execution of a
7 sentence of death on the individual against whom the sentence was imposed.
- 8 (b) (1) A warrant of execution shall:
- 9 (i) state the conviction and sentence;
- 10 (ii) designate a 5-day period, beginning on a Monday, within which
11 the sentence must be executed; and
- 12 (iii) command the Commissioner to carry out the death penalty on a
13 day within the designated period.
- 14 (2) The period designated in a warrant of execution shall begin not less
15 than 4 weeks and not more than 8 weeks after the warrant of execution is issued.
- 16 (c) At the time an individual is sentenced to death, the judge presiding in the
17 court shall issue a warrant of execution directed to the Commissioner.
- 18 (d) (1) A warrant of execution is stayed during the direct review process and
19 the State postconviction review process.
- 20 (2) If the original warrant of execution has not expired at the end of the
21 State postconviction review process, the judge who imposed the sentence of death or
22 the judge then presiding in the court in which the sentence was imposed shall lift the
23 stay imposed under paragraph (1) of this subsection.
- 24 (3) If the original warrant of execution has expired at the end of the
25 State postconviction review process, the judge who imposed the sentence of death or
26 the judge then presiding in the court in which the sentence was imposed shall issue
27 another warrant of execution.
- 28 (e) (1) If the Governor is satisfied that a medical examination shows that an
29 inmate is pregnant, the Governor shall revoke a warrant of execution for the inmate.
- 30 (2) As soon as the Governor is satisfied that the inmate is no longer
31 pregnant, the Governor promptly shall issue another warrant of execution.
- 32 (f) (1) The Governor may grant a stay of a warrant of execution for any
33 cause.
- 34 (2) If the Governor grants a stay under this subsection:

1 (i) the Governor shall issue an order revoking the warrant of
2 execution; and

3 (ii) the sentence of death may not be executed until the Governor
4 issues another warrant of execution.

5 (3) The Governor promptly shall notify the Commissioner of an order
6 that revokes a warrant of execution.

7 (g) (1) The Commissioner shall set a time, within the period designated in
8 the warrant of execution, when the sentence of death shall be executed.

9 (2) No previous announcement of the day or time of the execution may be
10 made except to those who are invited or allowed to be present as provided in this
11 subtitle.]

12 [3-903.

13 (a) In this section, "official" means:

14 (1) the Commissioner; or

15 (2) the sheriff of the county in which an inmate was indicted.

16 (b) (1) If the Governor grants a reprieve to an inmate under sentence of
17 death or a court imposes a stay on the execution of a sentence of death, the Governor
18 or court shall serve notice of the reprieve or stay on:

19 (i) the inmate; and

20 (ii) the official who has custody of the inmate.

21 (2) The official who has custody of the inmate shall obey the reprieve or
22 stay.

23 (c) An inmate who is granted a reprieve or stay shall remain in the custody of
24 the official who receives notice under subsection (b)(1)(ii) of this section.

25 (d) (1) In any subsequent judicial proceeding, the court shall serve any court
26 order regarding an inmate on:

27 (i) the inmate; and

28 (ii) the official who has custody of the inmate.

29 (2) If a court resents an inmate to death, the provisions of this
30 subtitle shall apply to the new sentence in the same manner as the original sentence.

31 (3) (i) If a new trial is granted to an inmate who is in the custody of
32 the Commissioner, the inmate shall be transported back to the place of trial under
33 guard as the Commissioner directs.

1 (ii) The expenses relating to the transportation of an inmate back
2 to the place of trial under subparagraph (i) of this paragraph shall be paid by the
3 Division.]

4 [3-904.

5 (a) (1) In this section the following words have the meanings indicated.

6 (2) "Incompetent" means the state of mind of an inmate who, as a result
7 of a mental disorder or mental retardation, lacks awareness:

8 (i) of the fact of the inmate's impending execution; and

9 (ii) that the inmate is to be executed for the crime of murder.

10 (3) "Inmate" means an individual who has been convicted of murder and
11 sentenced to death.

12 (b) An inmate is not incompetent under this section merely because the
13 inmate's competence depends on continuing treatment, including the use of
14 medication.

15 (c) The State may not execute a sentence of death against an inmate who has
16 become incompetent.

17 (d) (1) A petition that alleges that an inmate is incompetent and that seeks
18 to revoke a warrant of execution against the inmate may be filed by:

19 (i) the inmate;

20 (ii) if the inmate is represented by counsel, counsel for the inmate;
21 or

22 (iii) if the inmate is not represented by counsel, any other person on
23 the inmate's behalf.

24 (2) The petition shall be filed in the circuit court of the county in which
25 the inmate is confined.

26 (3) On the filing of the petition, the court may stay any warrant of
27 execution that was previously issued and has not yet expired.

28 (4) The petition must be accompanied by an affidavit of at least one
29 psychiatrist that:

30 (i) is based, at least in part, on personal examination;

31 (ii) states that in the psychiatrist's medical opinion the inmate is
32 incompetent; and

33 (iii) states the pertinent facts on which the opinion is based.

1 (5) A copy of the petition shall be served on the Attorney General and the
2 Office of the State's Attorney that prosecuted the inmate, in accordance with the
3 service requirements of the Maryland Rules.

4 (6) Unless the inmate is already represented by counsel, the court
5 promptly shall appoint the public defender or, if the public defender for good cause
6 declines representation, other counsel to represent the inmate in the proceeding.

7 (7) Unless the State's Attorney stipulates to the inmate's incompetence,
8 the State's Attorney shall cause the inmate to be examined and evaluated by one or
9 more psychiatrists selected by the State's Attorney.

10 (8) If the inmate's request is reasonable and timely made, an inmate is
11 entitled to be independently examined by a psychiatrist that the inmate selects.

12 (9) Unless, with the court's approval, the parties waive a hearing, the
13 administrative judge of the court shall designate a time for an evidentiary hearing to
14 determine the inmate's competence.

15 (e) (1) A hearing under this section shall be held without a jury:

16 (i) in court;

17 (ii) at the place where the inmate is confined; or

18 (iii) at another convenient place.

19 (2) At the hearing, the inmate:

20 (i) subject to reasonable restrictions related to the inmate's
21 condition, may be present;

22 (ii) through counsel, may offer evidence, cross-examine witnesses
23 against the inmate, and make argument; and

24 (iii) has the burden of establishing incompetence by a
25 preponderance of the evidence.

26 (f) The court shall enter an order that:

27 (1) declares the inmate to be competent or incompetent; and

28 (2) states the findings on which the declaration is based.

29 (g) If the court finds the inmate to be competent, the court immediately:

30 (1) shall lift any stay of a warrant of execution that was previously
31 issued and has not yet expired; or

1 (2) if all previously issued warrants of execution have expired, shall
2 notify the court that imposed the sentence of death and request that the court issue a
3 new warrant of execution.

4 (h) (1) If the court finds the inmate to be incompetent, the court shall:

5 (i) stay any warrant of execution that was previously issued and
6 has not yet expired; and

7 (ii) remand the case to the court in which the sentence of death was
8 imposed.

9 (2) The court in which the sentence of death was imposed shall strike the
10 sentence of death and enter in its place a sentence of life imprisonment without the
11 possibility of parole.

12 (3) The sentence of life imprisonment without the possibility of parole
13 imposed under paragraph (2) of this subsection is mandatory and may not be
14 suspended wholly or partly.

15 (i) (1) There is no right of appeal from an order issued by a circuit court
16 under this section.

17 (2) Notwithstanding paragraph (1) of this subsection, either party may
18 seek review in the Court of Appeals by filing an application for leave to appeal in
19 accordance with the Maryland Rules.

20 (3) If an application for leave to appeal is filed, the Court of Appeals may
21 stay any warrant of execution that was previously issued and has not yet expired.

22 (j) (1) Not earlier than 6 months after a finding of competence, the inmate
23 may petition the court for a redetermination of competence.

24 (2) The petition must be accompanied by an affidavit of at least one
25 psychiatrist that:

26 (i) is based, at least in part, on personal examination;

27 (ii) states that in the psychiatrist's medical opinion the inmate is
28 incompetent;

29 (iii) states that the incompetence arose since the previous finding of
30 competence; and

31 (iv) states the pertinent facts on which each opinion is based,
32 including the facts that show the change in the inmate's condition since the previous
33 finding.

34 (3) Proceedings on a petition under this subsection shall be in accordance
35 with subsections (d) through (i) of this section.

1 (k) The Maryland Rules shall govern:

2 (1) the form of petitions and all other pleadings; and

3 (2) except as otherwise provided in this section, the procedures to be
4 followed by the circuit court in determining competency or incompetency and by the
5 Court of Appeals in reviewing applications for leave to appeal.

6 (l) This section does not affect the power of the Governor to stay execution of
7 a sentence of death under § 3-902(f) of this subtitle or to commute a sentence of death
8 under Article 41, § 4-513 of the Code.]

9 [3-905.

10 (a) The manner of inflicting the punishment of death shall be the continuous
11 intravenous administration of a lethal quantity of an ultrashort-acting barbiturate or
12 other similar drug in combination with a chemical paralytic agent until a licensed
13 physician pronounces death according to accepted standards of medical practice.

14 (b) (1) The administration of the lethal substances required by this section
15 is not the practice of medicine.

16 (2) Notwithstanding any other law, a pharmacist or pharmaceutical
17 supplier may dispense drugs, without a prescription, to the Commissioner or the
18 Commissioner's designee to carry out this section.]

19 [3-906.

20 (a) The Commissioner shall:

21 (1) provide a suitable and efficient place, enclosed from public view, in
22 which an execution may be carried out;

23 (2) provide all of the materials that are necessary to perform the
24 execution; and

25 (3) subject to subsection (c) of this section, select the individuals to
26 perform the execution.

27 (b) The Commissioner or the Commissioner's designee shall supervise the
28 execution.

29 (c) (1) An execution shall be performed by individuals who are selected by
30 the Commissioner and trained to administer the lethal injection.

31 (2) An individual who administers the paralytic agent and lethal
32 injection need not be licensed or certified as any type of health care practitioner under
33 the Health Occupations Article.]

1 [3-907.

2 (a) In addition to those individuals who are otherwise required to supervise,
3 perform, or participate in an execution, the Commissioner shall select at least 6 but
4 not more than 12 respectable citizens to observe the execution.

5 (b) Counsel for the inmate and a member of the clergy may be present at the
6 execution.]

7 [3-908.

8 The Commissioner shall:

9 (1) prepare and sign a certificate that states:

10 (i) the time and place of execution; and

11 (ii) that the execution was conducted in accordance with the
12 sentence of the court and the provisions of this subtitle;

13 (2) request that each witness of the execution sign the certificate; and

14 (3) file the certificate within 10 days after the execution with the clerk of
15 the court in the county in which the inmate was indicted.]

16 [3-909.

17 (a) On application of a relative, the body of an executed inmate shall be
18 returned to the relative at the relative's cost.

19 (b) If an application is not made under subsection (a) of this section, the
20 Commissioner shall arrange for burial.]

21 4-101.

22 (e) (2) "Eligible person" does not include an individual who:

23 (i) is serving two or more sentences of imprisonment for life under
24 Article 27, § 412 of the Code;

25 (ii) is serving one or more sentences of imprisonment for life when a
26 court or jury has found under FORMER Article 27, § 413 of the Code, beyond a
27 reasonable doubt, that one or more aggravating circumstances existed OR THE STATE
28 SOUGHT A PENALTY OF IMPRISONMENT FOR LIFE WITHOUT THE POSSIBILITY OF
29 PAROLE UNDER ARTICLE 27, § 412 OF THE CODE; or

30 (iii) has been convicted of murder in the first degree, rape in the
31 first degree, or a sexual offense in the first degree, unless the sentencing judge, at the
32 time of sentencing or in the exercise of the judge's revisory power under the Maryland
33 Rules, recommends that the individual be referred to the Institution for evaluation.

1 4-305.

2 (b) (1) Except as provided in paragraph (2) of this subsection, an inmate
3 sentenced to life imprisonment is not eligible for parole consideration until the inmate
4 has served 15 years or the equivalent of 15 years when considering allowances for
5 diminution of the inmate's period of confinement as provided under Title 3, Subtitle 7
6 of this article and Article 27, § 638C of the Code.

7 (2) An inmate sentenced to life imprisonment as a result of a proceeding
8 under FORMER Article 27, § 413 OF THE CODE OR IN A CASE UNDER ARTICLE 27, § 412
9 OF THE CODE IN WHICH THE STATE SOUGHT A PENALTY OF IMPRISONMENT FOR
10 LIFE WITHOUT THE POSSIBILITY OF PAROLE is not eligible for parole consideration
11 until the inmate has served 25 years or the equivalent of 25 years when considering
12 allowances for diminution of the inmate's period of confinement as provided under
13 Title 3, Subtitle 7 of this article and Article 27, § 638C of the Code.

14 (3) An eligible person who is serving a term of life imprisonment may be
15 paroled only with the Governor's approval.

16 6-112.

17 (c) (1) The Division shall complete a presentence investigation report in
18 each case in which [the death penalty or] imprisonment for life without the
19 possibility of parole is requested under Article 27, § 412 of the Code.

20 (2) The report shall include a victim impact statement as provided under
21 Article 27, § 781 of the Code.

22 (3) The court [or jury before which the separate sentencing proceeding is
23 conducted under Article 27, § 412 or § 413 of the Code] shall consider the report.

24 7-301.

25 (d) (1) Except as provided in paragraphs (2) and (3) of this subsection, an
26 inmate who has been sentenced to life imprisonment is not eligible for parole
27 consideration until the inmate has served 15 years or the equivalent of 15 years
28 considering the allowances for diminution of the inmate's term of confinement under
29 Article 27, § 638C of the Code and Title 3, Subtitle 7 of this article.

30 (2) An inmate who has been sentenced to life imprisonment as a result of
31 a proceeding under FORMER Article 27, § 413 OF THE CODE OR IN A CASE UNDER
32 ARTICLE 27, § 412 OF THE CODE IN WHICH THE STATE SOUGHT A PENALTY OF
33 IMPRISONMENT FOR LIFE WITHOUT THE POSSIBILITY OF PAROLE is not eligible for
34 parole consideration until the inmate has served 25 years or the equivalent of 25
35 years considering the allowances for diminution of the inmate's term of confinement
36 under Article 27, § 638C of the Code and Title 3, Subtitle 7 of this article.

37 (3) (i) If an inmate has been sentenced to imprisonment for life
38 without the possibility of parole under Article 27, § 412 or § 413 of the Code, the

1 inmate is not eligible for parole consideration and may not be granted parole at any
2 time during the inmate's sentence.

3 (ii) This paragraph does not restrict the authority of the Governor
4 to pardon or remit any part of a sentence under § 7-601 of this title.

5 (4) If eligible for parole under this subsection, an inmate serving a term
6 of life imprisonment may only be paroled with the approval of the Governor.

7 7-601.

8 (a) On giving the notice required by the Constitution, the Governor may:

9 [(1) commute or change a sentence of death into a period of confinement
10 that the Governor considers expedient;]

11 [(2)] (1) pardon an individual convicted of a crime subject to any
12 conditions the Governor requires; or

13 [(3)] (2) remit any part of a sentence of imprisonment subject to any
14 conditions the Governor requires, without the remission operating as a full pardon.

15 **Article - Health - General**

16 8-505.

17 (b) [Except in a capital case, on] ON consideration of the nature of the charge,
18 the court:

19 (1) May require or permit an examination to be conducted on an
20 outpatient basis; and

21 (2) If an outpatient examination is authorized, shall set bail for the
22 defendant or authorize the release of the defendant on personal recognizance.

23 12-104.

24 (b) [Except in a capital case, on] ON consideration of the nature of the charge,
25 the court:

26 (1) May require or permit the examination to be done on an outpatient
27 basis; and

28 (2) If an outpatient examination is authorized, shall set bail for the
29 defendant or authorize release of the defendant on recognizance.

30 12-105.

31 (a) [Except in a capital case, if] IF, after a hearing, the court finds that the
32 defendant is incompetent to stand trial but is not dangerous by reason of a mental

1 disorder or mental retardation, to self or the person or property of others, the court
2 may set bail for the defendant or authorize release of the defendant on recognizance.
3 12-106.

4 (a) Whether or not the defendant is confined, if the court considers that
5 resuming the criminal proceeding would be unjust because so much time has passed
6 since the defendant was found incompetent to stand trial, the court may dismiss the
7 charge. However, the court may not dismiss a charge:

8 (1) Without providing the State's Attorney and a victim who has filed a
9 notification request form under Article 27, § 770 of the Code advance notice and an
10 opportunity to be heard; and

11 (2) [(i) Until 10 years after the defendant was found incompetent to
12 stand trial in any capital case; or

13 (ii)] Until 5 years after the defendant was found incompetent to
14 stand trial in any [other] case where the penalty may be imprisonment in the State
15 penitentiary.

16 SECTION 2. AND BE IT FURTHER ENACTED, That an inmate who has been
17 sentenced to death before the effective date of this Act and who has not been executed
18 may not be executed and shall be considered as having received a sentence of life
19 imprisonment without the possibility of parole.

20 SECTION 3. AND BE IT FURTHER ENACTED, That in any case in which the
21 State has properly filed a notice that it intended to seek a sentence of death under
22 Article 27, § 412 of the Code in which a sentence has not been imposed, the notice of
23 intention to seek a sentence of death shall be considered withdrawn and it shall be
24 considered that the State properly filed notice under Article 27, § 412 of the Code to
25 seek a sentence of life imprisonment without the possibility of parole.

26 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect
27 October 1, 2001.